

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Kevin Embry,

NO. C 09-01808 JW

Plaintiff,

v.

**ORDER DENYING OBJECTOR'S
MOTION TO REOPEN CASE; DENYING
AS MOOT PLAINTIFF'S MOTION TO
REQUIRE APPEAL BOND**

ACER America Corp.,

Defendant.

Presently before the Court are Plaintiff's Motion to Require Appeal Bond¹ and Objector Bandas' Motion to Reopen Case.² Plaintiff asks the Court to require Objectors to post a bond of \$346,814.51, on the grounds that Objectors' appeal to the Ninth Circuit is frivolous and will result in a diminution of the value of the settlement to class members. (Bond Motion at 10-16.) After Plaintiff's Motion was filed and fully briefed, the Ninth Circuit dismissed Objectors' appeal under Circuit Rule 42-1 for failure to pay appeal fees. (See Docket Item No. 241.) Objector Bandas contends that this dismissal was in error, and asks the Court to reopen the case based on his belief that the Ninth Circuit will likely reopen his appeal as well.³

¹ (Plaintiff's Notice of Motion and Motion for Appeal Bond; Memorandum in Support Thereof, hereafter, "Bond Motion," Docket Item No. 232.)

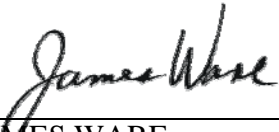
² (Objector Bandas' Motion for Administrative Relief Under Local Rule 7-11, to Reopen Case Based Upon Administrative Error, hereafter, "Reopen Motion," Docket Item No. 243.)

³ (See Reopen Motion at 2.)

1 Upon review, in light of the dismissal of Objectors' appeal by the Ninth Circuit, the Court
2 finds that Plaintiff's Motion to Require Appeal Bond is moot. Because there is no active appeal at
3 this time, the Court finds that it would be improvident to require any appellate bond. In addition,
4 although Objector Bandas contends that his appeal was dismissed by the Ninth Circuit on the basis
5 of an administrative error,⁴ the Court finds that this question is to be decided solely by the Circuit
6 itself.

7 Accordingly, the Court DENIES Objector Bandas' Motion to Reopen Case. Because no
8 appeal is currently pending in this case, the Court DENIES as moot Plaintiff's Motion to Require
9 Appeal Bond.⁵

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11 Dated: April 24, 2012



JAMES WARE
United States District Chief Judge

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26 ⁴ (Reopen Motion at 2.)

27 ⁵ In light of this Order, the Court further DENIES as moot Plaintiff's Motion to Conduct
28 Discovery. (See Docket Item No. 228.)

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Adam Gutride adam@gutridesafier.com
3 Adam Joseph Bedel ajbedel@quinnemanuel.com
4 Jeffery David McFarland jdm@quinnemanuel.com
5 Joseph Darrell Palmer darrell.palmer@palmerlegalteam.com
6 Sam Cannata samcannata@cannataphillipslaw.com
Seth Adam Safier seth@gutridesafier.com
Stan Karas stankaras@quinnemanuel.com
Todd Michael Kennedy todd@gutridesafier.com

7 **Dated: April 24, 2012**

Richard W. Wieking, Clerk

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9 **By: /s/ JW Chambers**
10 **Teresa De Martini**
11 **Courtroom Deputy**
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